

**BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A**

IN RE: CHARLES DWAIN OLIVER, Respondent
Arkansas Bar ID#2001009
CPC Docket No. 2007-043

FILED

SEP 28 2007

LESLIE W. STEEN
CLERK

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Cara L. Free in an Affidavit dated April 19, 2007. The information related to the representation of Ms. Free and possibly her children by Respondent beginning in January 2006.

During April 2007, Respondent was served with a formal complaint, supported by affidavit from Cara L. Free. Respondent filed a timely response in accordance with the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law. The matter thereafter proceeded to ballot vote before Panel B of the Committee. After notification of the decision of Panel B, Respondent requested a public hearing. The hearing was held pursuant to Section 11 of the Procedures on Friday, September 21, 2007.

Mr. Oliver appeared before the Panel and represented himself. The Office of Professional Conduct was represented by Stark Ligon, Executive Director, and Nancie M. Givens, Deputy Director. Testifying for the Office of Professional Conduct was the Complainant, Cara Free. Mr. Oliver testified in his own defense as did his wife.

The information before the Committee reflected that during January 2006, Cara Free hired Charles Dwain Oliver, an attorney practicing primarily in Hampton, Arkansas, to represent her and her children in their claims for personal injury as the result of an automobile accident.

The agreement was that Mr. Oliver would receive 1/3 of any settlement. On that same date, Ms. Free signed a Letter of Representation with regard to her claims. There were no contracts signed by Ms. Free with regard to Mr. Oliver's representation of her children in their claims for injuries. Ms. Free hired Mr. Oliver because he is the local attorney in the community where she lives. He is the City of Hampton's prosecuting attorney and she is a court clerk for Calhoun County. Mr. Oliver testified that he did not ever agree to represent Ms. Free's children. She believed, however, that he was representing all three of them.

When Ms. Free hired Mr. Oliver, she turned over all copies of notes and logs that she had maintained since the accident in December 2005. She also turned over all receipts for the hauling of hay, horses, etc., due to the fact that she owns a ranch and it was the main ranch vehicle that was totaled in the accident.

After seven (7) months of little contact, Ms. Free resolved to terminate Mr. Oliver's representation of her. When Mr. Oliver's representation was terminated, Ms. Free received a file from him but the file did not contain all of her information. She did not receive from Mr. Oliver her notes, a newspaper article, or the receipts for hauling of hay, etc. According to Mr. Oliver, the only two things he did not have available when Ms. Free first came to his office to obtain her file were the newspaper article and the personal notes. Mr. Oliver testified that he mailed those items to Ms. Free a few days after she received the other portion of her file. Mr. Oliver did not have a copy of a letter transmittal with him at the hearing. Ms. Free testified that she never received those documents from Mr. Oliver. Mr. Oliver testified that he kept the original of Ms. Free's file to send to her new attorney but acknowledged that he did not send it. When questioned by a member of the Committee, Mr. Oliver stated that he did not have the original file

with him at the hearing but had left it in his office in Hampton.

Ms. Free hired other counsel and he is handling the personal injury matter on her behalf. Her new counsel attempted on various occasions to communicate with Mr. Oliver so that he could obtain information from Ms. Free's file. Mr. Boyd, the new counsel, also wrote Mr. Oliver to find out if he planned to place a lien on the proceeds of the settlement or other recovery. Mr. Oliver failed to respond. Mr. Oliver's failure to communicate with Mr. Boyd was not only an annoyance, but also slowed down the process of her pursuing the claims for injuries.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, the testimony of the witnesses, other matters before it, and the Arkansas Model Rules of Professional Conduct, Panel A of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. That Mr. Oliver's conduct violated Arkansas Rule conduct violated Rule 1.4(a)(4), when he failed to respond to Mr. Boyd's request for information on behalf of Ms. Free concerning whether he was asserting a lien in Ms. Free and her children's personal injury claims. The Committee found a violation of this Rule by a 6 -1 vote, with Panel Member Trafford, finding no violation. Rule 1.4(a)(4) requires that a lawyer promptly comply with reasonable requests for information.

2. That Mr. Oliver's conduct violated Rule 1.16(d), because after his representation of Ms. Free and her children was terminated, he failed to surrender papers and property to which Ms. Free was entitled from his representation of her. The Committee found a violation of this Rule by unanimous vote. Rule 1.16(d) requires, in pertinent part, that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's

interests, such as surrendering papers and property to which the client is entitled.

3. That Mr. Oliver's conduct violated Rule 4.4 in that his failure to respond to Mr. Boyd's requests for information concerning his representation of Ms. Free and her children had no purpose other to burden or delay Ms. Free and Mr. Boyd in concluding Ms. Free's claims for injuries suffered in the accident of December 23, 2005. The Committee found violation of this Rule by a 4 - 3 vote, with Panel Members Shults, Hodge and Trafford finding no violation. Rule 4.4. requires, in pertinent part, that in representing a client, a lawyer shall not use means that had no substantial purpose other than to embarrass, delay or burden a third person.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that CHARLES DWAIN OLIVER, Arkansas Bar ID#2001009, be, and hereby is, CAUTIONED for his conduct in this matter. In addition, pursuant to Section 18.A of the Procedures, Mr. Oliver is assessed the costs of this proceeding in the amount of \$201.25. Further, Mr. Oliver is ordered to pay a fine in the amount of \$500 pursuant to Section 18.B of the Procedures. The fine and costs assessed herein, totaling \$701.25, shall be payable by cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" delivered to the Office of Professional Conduct within thirty (30) days of the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court.

ARKANSAS SUPREME COURT COMMITTEE
ON PROFESSIONAL CONDUCT - PANEL A

By: _____

Jerry D. Pinson, Chair, Panel A

Date: _____